

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

City of Boston, Massachusetts
Rate Regulation Re-Certification

Boston, MA (MA0182)

CSR-8488-R

To: Chief, Media Bureau

**OPPOSITION TO PETITION FOR RECONSIDERATION
OF RATE REGULATION RE-CERTIFICATION**

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May 23, 2012

SUMMARY

For over a decade, the Commission has prevented the City of Boston, Massachusetts, from regulating Comcast's cable service rates because it believed that RCN offered service in the City that limited Comcast's ability to charge excessive rates.¹ Unfortunately, this proved to be incorrect, and it led to serious, negative consequences for Boston's consumers. The record shows that Comcast charged Boston cable subscribers "approximately \$24 Million more than it charged neighboring communities' Basic Service customers over the time period of 2008 through 2011."² And Comcast's percentage increases in monthly fees "are remarkably lower in other communities in the Boston area that are still rate regulated."³ The City presented this information to the Commission in an Emergency Petition last year and on April 6, 2012, the Commission got it right: it found that RCN presents no effective competition to Comcast because it covers only one-third of the City and there is "no realistic possibility" that it will expand.⁴

Now Comcast asks the Commission to undo all of this. Comcast's petition reveals that subscribership to satellite service alone does not begin to approach the 15% required for a finding of "effective competition," and surpasses 15% of total households in only two City neighborhoods. The company concedes that it is the *only* cable provider available to the overwhelming majority—over two-thirds (170,000+)—of Boston's households. And it does not directly dispute that there is "no realistic possibility" that these households will see a competitive

¹ *Cablevision of Boston, Inc.* 16 FCC Rcd. 14056 (2001), *application for review denied*, 17 FCC Rcd. 4772 (2002).

² Front Range Consulting Inc., *Report to the City of Boston Regarding Comcast's Basic Service Cable Rates* (April 2011).

³ *Id.*

⁴ *In re Petition of the City of Boston, Massachusetts, For Recertification to Regulate the Basic Cable Service Rates of Comcast Cable Communications, LLC*, DA 12-553 (Apr. 9, 2012) ("Recertification Order") at ¶¶ 7-8.

offering from RCN. Yet Comcast claims it is subject to effective competition anyway by mixing questionable household subscribership data with a claim all-too-familiar: it combines the subscribership figures of satellite service providers with those of *RCN*, the very company that the Commission just ruled does *not* “offer” service under the LEC Test for effective competition purposes.⁵

Under these circumstances, including RCN’s household subscribership figures defies the Communications Act and the Commission’s rules. The Commission’s Recertification Order establishes that RCN’s subscribers are not properly considered subscribers of a distributor “*that offer[s] service* in the franchise area.”⁶ Consequently, RCN’s subscribership data must be excluded; Comcast cannot meet the Competitive Provider Test’s 15% standard using DBS subscribership alone. In addition, although Comcast bears the burden here, the household subscribership data the company presents is marred by an important inconsistency that makes a fair application of the Competitive Provider Test impossible. Under the 15% calculation, Comcast has excluded dormitories and other similar locations from its total household count (denominator), but it makes no exclusion of dormitories and other facilities when it aggregates DBS and RCN subscribing households (numerator). This differing treatment of the term “household” is indefensible: it provides a distorted picture of the percentage of Boston “households” subscribing to services from distributors other than Comcast.

The fact that Comcast even can suggest (wrongly) that it faces “effective” competition under these circumstances indicates that it is time for Congress and the Commission to reexamine what constitutes effective competition. Moreover, the City notes that the existing

⁵ Recertification Order at ¶¶ 7-8.

⁶ 47 C.F.R. § 76.905(f) (emphasis added).

effective competition tests give no consideration to broadband competition. The City, the Commonwealth of Massachusetts, Congress, the Commission, and the Administration all seek to address the digital divide by encouraging broadband deployment and adoption. The cable industry is also actively contributing towards these local and national agendas through partnering initiatives like Internet Essentials. Still, a review of effective competition petitions reveals that they do little to facilitate broadband competition: they are granted due to competition from satellite providers. The Commission must ensure that the controlling standards facilitate this goal and clearly protect consumers from the unrestrained market power that is evident and documented in Boston. Should the Commission find it lacks authority to do so, it has moral obligation to the Nation's consumers to request that Congress take action.

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**OPPOSITION TO PETITION FOR RECONSIDERATION
OF RATE REGULATION RE-CERTIFICATION**

The City of Boston, Massachusetts, through its counsel, opposes the Petition for Reconsideration of Rate Regulation Re-Certification filed by Comcast Cable Communications, LLC (“Comcast”) on May 8, 2012.⁷ Shortly after the Commission decided that Comcast does not face effective competition due to RCN’s limited presence in the City, Comcast now combines RCN’s subscribership figures with a total subscribership household count that defies Commission precedent to claim that it faces effective competition under the “competitive provider” test. Again, Comcast is wrong. The record demonstrates that Comcast faces little or no meaningful competition across the City—a fact of which Boston’s consumers are repeatedly reminded when they open their bills each month. The Commission must not allow this to continue. It should definitively establish that Comcast does not face effective competition here, and permit the City to move ahead to oversee Comcast’s rates.

If the Commission genuinely seeks to serve the public interest, however, it has an obligation to do more. It should proceed to re-examine its effective competition standards and call on Congress to do the same: the fact that Comcast could even suggest (albeit wrongly) that

⁷ 47 C.F.R. § 1.106(g).

effective competition exists here—in light of the lack of competition in Boston and its documented effect on consumers—suggests that a new approach is needed.

I. BACKGROUND.

For over a decade, the Commission has prevented the City from regulating Comcast's rates because it believed that RCN offered service in the City that limited Comcast's ability to exercise unrestrained market power.⁸ This proved to be incorrect, and it has led to serious, negative consequences for Boston's consumers. The record here shows that Comcast charged Boston cable subscribers "approximately \$24 Million more than it charged neighboring Basic Service customers over the time period of 2008 through 2011."⁹ And Comcast's percentage increases in monthly fees "are remarkably lower in other communities in the Boston area that are still rate regulated."¹⁰

Over a year ago, the City presented this information to the Commission in an Emergency Petition. The City asked the Commission to restore the City's authority to regulate Comcast's basic service rates, and showed that RCN: (i) serves only a limited geographic area of the City; (ii) is under no legal obligation to expand its system throughout the City; and (iii) has no intention of doing so. On April 6, 2012, the Commission got it right: it found that RCN presents no effective competition to Comcast because it covers only one-third of the City and there is "no realistic possibility" that it will expand.¹¹

⁸ *Cablevision of Boston, Inc.* 16 FCC Rcd. 14056 (2001), *application for review denied*, 17 FCC Rcd 4772 (2002).

⁹ Front Range Consulting Inc., *Report to the City of Boston Regarding Comcast's Basic Service Cable Rates* (April 2011).

¹⁰ *Id.*

¹¹ *In re Petition of the City of Boston, Massachusetts, For Recertification to Regulate the Basic Cable Service Rates of Comcast Cable Communications, LLC*, DA 12-553 (Apr. 9, 2012) ("Recertification Order") at ¶¶ 7-8.

Now Comcast asks the Commission to undo all of this. Comcast recognizes that subscribership to satellite service alone does not begin to approach the 15% required for a finding of “effective competition.” The company concedes that it is the *only* cable provider available to the overwhelming majority—over two-thirds (170,000+)—of Boston’s households. And it does not directly dispute that there is “no realistic possibility” that these households will see a competitive offering from RCN. Yet Comcast claims it is subject to effective competition anyway by mixing questionable data with a claim all-too-familiar: it combines the subscribership figures of satellite service providers with subscribership figures of *RCN*, the very company that the Commission just ruled does *not* “offer” service under the LEC Test for effective competition purposes.¹²

II. COMCAST HAS NOT ESTABLISHED THAT IT FACES EFFECTIVE COMPETITION.

Comcast has failed to show that it is subject to effective competition in the City. The Commission must review Comcast’s petition while presuming that “effective competition does not exist” in the City.¹³ Comcast bears the burden of presenting the Commission with “evidence” establishing otherwise.¹⁴ For a number of reasons, Comcast’s petition falls far short of overcoming this presumption, and must be rejected.

A. Comcast Improperly Includes RCN Subscribership Data.

After the Commission has just determined that RCN’s service offerings in the City do not constitute effective competition, Comcast now claims again that it is subject to effective competition due in significant part to just this: RCN’s subscribership. Conceding that City

¹² Recertification Order at ¶¶ 7-8.

¹³ 47 C.F.R. §§ 76.907(b), 76.911(a)(1).

¹⁴ *Id.*

satellite service subscribership falls well short of the “competitive provider” test’s 15% standard (10.61%), Comcast can only surpass this standard by combining the satellite data with RCN’s subscribership figure (7.76%).¹⁵ But using RCN’s subscribership data to establish effective competition here defies both the Communications Act and the Commission’s rules. The Commission’s Recertification Order establishes that RCN’s subscribers are not properly considered subscribers of a distributor “*that offer[s] service* in the franchise area.”¹⁶ Consequently, RCN’s subscribership data must be excluded, and Comcast cannot meet the 15% test.

1. *The Commission May Only Aggregate Subscribers of Distributors That “Offer” Service for Effective Competition Purposes.*

Comcast maintains that to pass the 15% prong of the “competitive provider” test, it may aggregate subscribership figures “of *all* qualifying MVPDs.”¹⁷ While this is true as far as it goes, it only goes so far. It omits an express element of the FCC’s rule: whether the providers in question “offer” service under the effective competition definition. The 15% calculation aggregates “the number of subscribers of all multichannel video programming distributors that *offer* service in the franchise area”¹⁸

The word “offer” plays a specialized and recurring role in the definition of “effective competition” under 47 U.S.C. § 543(l)(1). One clause of the definition added in 1996—the LEC Test—uses the word “offer[]” as follows:

[A] local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) *offers* video programming services directly to subscribers by any means

¹⁵ Petition at 9. The City does not admit the accuracy of these figures, as discussed *infra*.

¹⁶ 47 C.F.R. § 76.905(f) (emphasis added).

¹⁷ Comcast Petition at 7.

¹⁸ 47 C.F.R. § 76.905(f) (emphasis added).

(other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so *offered* in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.¹⁹

Congress added this clause to the balance of the effective competition definition that it had adopted four years earlier. Part of this definition—the Competitive Provider Test—also uses the word “offer[]” in both prongs of its test:

the franchise area is--

(i) served by at least two unaffiliated multichannel video programming distributors each of which *offers* comparable video programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to programming services *offered* by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.

Under the Commission’s rules, MVPD service is “offered,” *inter alia*, “[w]hen no regulatory, technical or *other impediments* to households taking service exist.”²⁰ When Congress added the LEC Test, it expressly linked the meaning of the word “offer” to that which the Commission had already established: “‘offer’ has the same meaning given that term in the Commission’s rules as in effect on the date of enactment of [the 1996 Act].”²¹ Consistent with this direction, the Commission has harmonized “offer” across the effective competition definition. For example, it has ruled that although the LEC Test and Competitive Provider Test are different, “nothing in the statute or legislative history suggests that, when incorporating the

¹⁹ 47 U.S.C. § 543(l)(1)(D).

²⁰ 47 C.F.R. § 76.905(e)(2).

²¹ H.R. Rep. No. 458, 104th Cong., 2d Sess. 170 (1996)

word ‘offer’ into the LEC test, Congress intended that ‘offer’ should lose its context of the widespread availability of the competing service.”²²

A provider does not “offer” service through its mere (or limited) presence; it must do more. Applying the LEC Test, the Commission has ruled that, “the LEC’s service must substantially overlap the incumbent cable operator’s service in the franchise area.”²³ There is no “offer” if service is provided “only to a specialized or niche market or to a geographically limited market within the franchise area.”²⁴ The Commission continued:

Nor is the test satisfied if the LEC does not have firm plans to build or market so as to offer service that substantially overlaps the incumbent cable operator’s service in the franchise area, or the public is not reasonably aware of any such plans. To find effective competition when the LEC does not intend widespread service invites the problem *that concerned Congress when it adopted the uniform rate requirement as part of the 1992 Cable Act*; namely, a cable operator’s ability to charge low rates in parts of the franchise area where it faces competition and charge higher unregulated rates in those parts of the franchise area where it does not face competition and has no reason to expect competitive repercussions from such pricing behavior.²⁵

The provision at issue here, the 1992 Act’s Competitive Provider Test, uses the word “offer” in *both* the 50% and 15% prongs. The Commission’s rule for the 15% test reflects that “offer” is not considered only as part of the 50% analysis: it requires a petitioner to aggregate “the number of subscribers of all multichannel video programming distributors *that offer service* in the franchise area.”²⁶

²² 14 FCC Rcd. 5296, 5302 (FCC 1999)

²³ *In re Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd. 5296, 5304 ¶ 10 (1999).

²⁴ *Id.* at ¶ 12.

²⁵ *Id.*

²⁶ 47 C.F.R. § 76.905(f) (emphasis added).

2. *The Commission Has Ruled That RCN Does Not “Offer” Service for Effective Competition Purposes.*

The Commission has now established that RCN does not “offer” service in the City. Indeed, whether RCN “offers” service in Boston has long been this matter’s central question. In 2001, the Commission withdrew the City’s rate regulation authority because it found that RCN’s sizeable investment, franchise agreement, subscribership, and financial backing were “indicia that RCN is now *offering*, and will continue *to offer*, service in the City of Boston.”²⁷ But just last month, the Commission reversed course: it concluded that “the reasons for the earlier revocation of the City’s authority are no longer valid.”²⁸ Therefore, the Commission has determined that RCN does not “offer” service because there are significant “impediments to households taking service.”²⁹ It follows that under the Commission’s standard for the 15% analysis—aggregating only “the number of subscribers of all multichannel video programming distributors that *offer* service in the franchise area”—the Commission must exclude RCN’s subscribership. This leaves only DBS subscribers, which Comcast admits amount to only 10.61% of the City’s households.

3. *Excluding RCN Subscribership Is Permissible.*

The D.C. Circuit’s decision in *Time Warner Entertainment Co., L.P. v. FCC* does not preclude the Commission from excluding RCN’s subscribers from the 15% analysis.³⁰ There, the D.C. Circuit rejected the Commission’s attempt to extend the 50% analysis under the “competing

²⁷ *In re Cablevision of Boston*, 16 FCC Rcd. 14056, 14061 (2001) (internal footnotes omitted) (emphasis added).

²⁸ Recertification Order ¶ 8.

²⁹ 47 C.F.R. § 76.905(e)(2).

³⁰ 56 F.3d 151, 188-190 (D.C. Cir. 1995).

provider” test to its 15% test.³¹ The court found that the Commission’s motivation was “theoretically sound,” but determined that the 50% test could not be so extended: “The two overbuild criteria operate independently, and Congress did not limit the 15% threshold in § 543(l)(1)(B)(ii) to those cable systems that satisfy § 543(l)(1)(B)(i).”³² For the court, this was a simple matter of plain language: the 50% test only applies to the first prong.³³

By harmonizing the meaning of the word “offer” across the statute’s “effective competition” definition, the Commission would not repeat this statutory error.³⁴ Under the LEC test, the Commission has not ruled that a video provider only “offers” service if it reaches “50 percent of the households in the franchise area.”³⁵ Instead, it has evaluated the “offer” in light of competitive realities on the ground. For example, in *Mediacom Delaware LLC*, the Commission found that a competing provider “offers” service for effective competition purposes where its system covered only 1/3 of the territory served by the petitioning cable operator, but where it planned to expand.³⁶ The Commission contrasted this with the situation in Boston, where RCN covers a similar area but where its expansion is an “impossibility.”³⁷ This practical reading of the word “offer” is well within the Commission’s authority, and (unlike the Commission’s extension of the 50% rule) it is consistent with—indeed, it is the only reading that honors—the statute’s

³¹ *In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd. 5631, 5664-65 (1993).

³² *Time Warner*, 56 F.3d at 189.

³³ *Id.* (“Had Congress intended to disqualify as overbuilds those systems that faced only a satellite competitor in at least 50% of their franchise area, it could have done so expressly.”).

³⁴ Instead, it would be following a course that, more recently, the Supreme Court has established permits Commission action. *NCTA v. Brand X Internet Servs.*, 545 U.S. 967, 989 (2005) (finding Commission has authority to implement the word “offering”).

³⁵ 47 U.S.C. § 543(l)(1)(B)(i).

³⁶ 26 FCC Rcd. 3668, 3672 ¶ 14 (2011).

³⁷ Recertification Order ¶ 8.

plain language.³⁸ Nothing in the Act or the D.C. Circuit’s decision requires the Commission to ignore practical realities of RCN’s (lack of) “offer” in the City under one clause of the “effective competition” definition but not the other.

B. Comcast Inconsistently Includes Dormitories and Other Facilities.

Comcast bears the burden here, but its presentation of household subscribership data is marred by an important inconsistency that makes a fair application of the 15% test impossible. Under the 15% calculation, Comcast has excluded dormitories and other similar locations from its total household count (denominator), but it makes no exclusion of dormitories and other facilities to determine DBS and RCN subscribing households (numerator). This differential treatment of the term “household” is indefensible: it provides a distorted picture of the percentage of Boston “households” subscribing to services from distributors other than Comcast. Since Comcast bears the burden here, the Commission should deny the company’s petition as inconsistent with well-established precedent regarding the meaning of “household.”

The Commission has defined “household” to exclude “unoccupied housing units, college or university dormitories, seasonal or vacation homes, [and] nursing homes and similar assisted living facilities.”³⁹ It has also recognized that the U.S. Census Bureau’s definitions exclude “college or university dormitories” from the definition of households.⁴⁰ Here, however, Comcast has only used the Commission’s definition of “household” for part of the equation. The company

³⁸ Of course, the D.C. Circuit’s decision also pre-dated Congress’s 1996 amendment of the “effective competition” definition. The Commission has the authority to address any ambiguities in the definition arising out of the melding of the 1992 and 1996 laws.

³⁹ *In re Time Warner Entertainment-Advance/Newhouse P'ship*, 26 FCC Rcd 3829, 3835 ¶ 20 (2011).

⁴⁰ *In re Marcus Cable Associates, LLC d/b/a Charter Communications*, 18 FCC Rcd 9649 ¶ 7 (2003).

relies on the U.S. Census Bureau's figure to establish the City's total household count,⁴¹ but it makes no indication that it has excluded subscribership in dormitories from the DBS and RCN "household" subscribership counts.

This could have a significant impact in Boston, which is home to 35 colleges, universities, and community colleges.⁴² The City's colleges and universities have 152,000 students; 37,000 of these students live in on-campus housing facilities.⁴³ It is reasonable to assume that many of the remaining 115,000 students are housed in other temporary housing not provided by the college or university. It is therefore likely that both the DBS and RCN household subscribership figures Comcast has provided are incorrect by a wide margin.

III. THE COMMISSION SHOULD ACT TO UPDATE THE CONTROLLING EFFECTIVE COMPETITION STANDARDS.

As explained above, Comcast's petition has no support in law or Commission precedent—and should quickly be rejected. But the mere fact that Comcast could suggest that it faces effective competition where it so clearly does not indicates that it is time for Congress and the Commission to re-examine the controlling standards in this area.

⁴¹ Petition at Exhibit 8.

⁴² Boston Redevelopment Authority, *Boston by the Numbers, Colleges and Universities*, available at:

<http://www.bostonredevelopmentauthority.org/PDF/ResearchPublications/BBNCollegesUniversities.pdf>

⁴³ *Id.*

A. The Record Shows That Comcast Does Not Face Meaningful Competition in Large Areas of the City.

The record in this matter shows that Comcast does not face meaningful competition in large areas of the City. In fact, Comcast appears to concede that it does not face meaningful competition in large areas of the City. It admits or does not specifically dispute that:⁴⁴

- Comcast is the *only* cable provider available to the overwhelming majority—over two-thirds (170,000+)—of Boston’s households.⁴⁵
- There is “no realistic possibility” that these households will see a competitive offering from RCN.⁴⁶
- Subscription to satellite service across the City does not begin to approach 15%.⁴⁷

Analyzing the satellite data by Boston neighborhood confirms that large areas of the City do not see meaningful competition from DBS providers. In fact, subscription to DBS surpasses 15% in only two City neighborhoods:

| Nghbhd by zip | DBS #'s | DBS/ Nghbhd Hsg % | Nghbhd / City | Nghbhd Hsg #'s | Nghbhd | |
|---------------|---------|-------------------|---------------|----------------|--------------------|--|
| | 894 | 5.0% | 6.6% | 17891 | Central Boston | |
| 02116 | 321 | 1.7% | 6.8% | 18396 | Back Bay | |
| 02118 | 1875 | 10.8% | 6.4% | 17422 | South end, Lr. Rox | |
| 02119 | 1715 | 6.9% | 9.2% | 24964 | Roxbury | |
| 02122 | 1876 | 7.9% | 8.7% | 23608 | Dorchester (south) | |
| 02125 | 5632 | 50.8% | 4.1% | 11081 | Dorchester, North | |
| 02126 | 1951 | 14.4% | 5.0% | 13558 | Mattapan | |

⁴⁴ Comcast indicates it “does not agree” with the Commission’s findings under the LEC Test generally, but it does not challenge the findings or explain its disagreement. Petition at 3 n.11.

⁴⁵ Recertification Order at ¶ 7 (finding that “RCN now passes 32.1 percent of the households in Boston”).

⁴⁶ Recertification Order at ¶ 8.

⁴⁷ Petition at Exhibit 9.

| Nghbhd by zip | DBS #'s | DBS/ Nghbhd Hsg % | Nghbhd / City | Nghbhd Hsg #'s | Nghbhd | |
|---------------|---------|-------------------|---------------|----------------|---------------|--|
| 02127 | 1660 | 9.4% | 6.5% | 17623 | South Boston | |
| 02128 | 3907 | 24.6% | 5.8% | 15854 | East Boston | |
| 02129 | 518 | 6.0% | 3.2% | 8648 | Charlestown | |
| 02130 | 914 | 5.2% | 6.5% | 17650 | Jamaica Plain | |
| 02131 | 1406 | 10.3% | 5.0% | 13621 | Roslindale | |
| 02132 | 1150 | 8.5% | 5.0% | 13546 | West Roxbury | |
| 02135 | 1283 | 4.0% | 11.7% | 31912 | Brighton | |
| 02136 | 1329 | 10.8% | 4.5% | 12317 | Hyde Park | |
| 02215 | 267 | 1.9% | 5.3% | 14390 | Kenmore | |
| | | | | 272481 | | |

Therefore, in over 90% of the City’s total households, subscribership to satellite service falls short of the 15% level—and often by a wide margin. For example, while approximately 110,889 of the City’s households are in the City’s Back Bay, Roxbury, Dorchester (south), Charlestown, Jamaica Plain, and South Boston neighborhoods, these neighborhoods have only 7,004 DBS households (6.3%). This is not “effective” competition in any meaningful sense, and it does not become “effective” by padding the numbers with RCN’s subscribership figures in the small portion of the City that it serves. The fact that under these circumstances, Comcast could even suggest (wrongly) that it faces effective competition shows that it is time for the Commission and Congress to re-examine the controlling standards in this area.

B. The Competitive Provider Test Is Not a Useful Measure of Whether a Provider Is Subject to Competition That Can Be Called “Effective.”

The Commission is well aware that cable rates continue to rise well beyond the rate of inflation. Between 1995 and 2010, “expanded basic prices grew from \$ 22.35 to \$ 54.44, an increase of 144 percent, or 6.1 percent on a compound average annual basis, compared to the

CPI increase of 44 percent, or 2.5 percent annually over the same period.”⁴⁸ But the Commission is equally aware that this problem is greatest in communities where the Commission has preempted local authority: “[E]xpanded basic prices are growing fastest in . . . effective competition communities, at 4.6 percent over the 12 months ending January 1, 2010, compared to 3.2 percent over the period for noncompetitive communities.”⁴⁹ For the second consecutive year, the Commission found that “the price of expanded basic service in effective competition communities was higher than the price of expanded basic in noncompetitive communities.”⁵⁰

The Commission’s current “effective competition” tests are responsible for this. The 50% standard under the Competitive Provider Test has proven to be a nullity: the Commission routinely finds that this test is satisfied due to DBS providers’ service. Yet the fact that DBS providers pass this standard has no meaningful effect on incumbent cable providers’ rates. Likewise, even when 15% of households in a franchise area subscribe to programming services offered by other competitors, this often does not provide a meaningful check on the incumbent’s rates. The Commission should re-visit its standards, and call on Congress to do the same.

C. The Effective Competition Tests Also Fail To Incorporate Any Measure of Broadband Competition.

As the Commission calls for change in this area, it should also note that the existing effective competition tests give little or no consideration to broadband competition and deployment. The City is working with the Commission and the Administration to address the digital divide by encouraging broadband deployment and adoption. And the cable industry is providing resources towards these local and national agendas through partnering initiatives like

⁴⁸ *In re Cable TV Consumer Prot. & Competition Act of 1992*, 27 FCC Red. 2427, 2434 at ¶ 2 (2012).

⁴⁹ *Id.* at ¶ 14.

⁵⁰ *Id.* at ¶ 4.

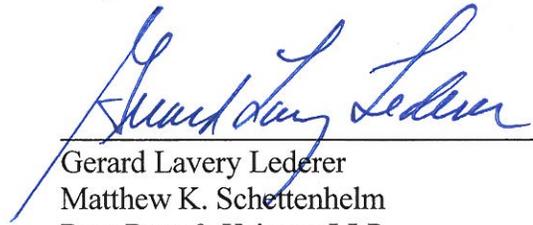
Internet Essentials. But most effective competition petitions do little to facilitate broadband competition: they are granted due to competition from satellite providers.⁵¹ The Commission should seek changes to the effective competition standards to ensure that they facilitate this important goal, as well.

CONCLUSION

For the reasons indicated, the Bureau should deny Comcast's Petition.

Respectfully submitted,

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May 23, 2012

⁵¹ *Id.* at ¶ 14 n.14.

CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)

I have read the foregoing Opposition and, to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and it is not interposed for any improper purpose.

Respectfully submitted,

A handwritten signature in blue ink, reading "Gerard Lavery Lederer", written over a horizontal line.

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May 23, 2012

Certificate of Service

I hereby certify that I have caused to be mailed this 23rd day of May 2012, copies of the foregoing Opposition, by first-class mail, postage prepaid, to the following persons:

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